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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,321	12/12/2003	Alain Azagury	IL920030052US1	2268

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IBM CORPORATION  
INTELLECTUAL PROPERTY LAW DEPT.  
P.O. BOX 218  
YORKTOWN HEIGHTS, NY 10598

EXAMINER
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ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
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2443

MAIL DATE	DELIVERY MODE
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09/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/735,321

**Applicant(s)**

AZAGURY ET AL.

**Examiner**

DAVID E. ENGLAND

**Art Unit**

2443

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 18 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/David E. England/  
Primary Examiner, Art Unit 2443

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that the Double Patenting rejection is in error since claim 38 claims an emulation processor and the co pending application 12/062211 claims an emulation device. As the Examiner has stated before, these inventions are the same thing. A processor can be broadly interpreted as a device and a device can have a processor, both of which claim the same limitations and steps. Furthermore, co pending application 12/062211 claims, As of the FINAL OFFICE ACTION dated 05/18/2009, an emulation Processor. Double Patenting rejection stands. In the Remarks, Applicant argues in substance that the prior art does not teach, "a plurality of computers without on-board user interface controllers, each of the computers including at least one central processing unit (CPU) and a LAN interface, the LAN interface being coupled to communicate over the LAN". Applicant further states different teachings of the prior art and that none of which teach this limitation.

The Examiner would like to point to the Applicant's Drawings and Specification, specifically element 22. Applicant's "plurality of computers without on-board user interface controllers" is nothing more than a couple of servers and can be interpreted as any type of server and/or storage device over the network that doesn't have a keyboard, mouse, monitor, etc., directly attached to it. Applicant has Failed to claim the "plurality of computers without on-board user interface controllers" as anything else.

In the Remarks, Applicant argues that Dai teaches SCSI and that a given SCSI device (physical)\_can be used to emulate several (logical) devices and that this is "clearly different" from the Applicant's emulation processor.

As to this remark, the Applicant's claim language Fails to teach anything significantly different than merely a emulation processor that collects inputs and outputs. This is what is commonly done in the network storage art, one saves information, i.e., inputs, then retrieves it, i.e., outputs. This reads on the claims since the prior art teaches a storage system that emulates other devices for storage in a network environment.

If the Applicant wishes to have an interview to discuss amendment proposals, it is encouraged that they do so.